

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

LINDA FAIRSTEIN,

Plaintiff,

v.

NETFLIX, INC., AVA DUVERNAY, and
ATTICA LOCKE,

Defendants.

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Case No. 20-cv-8042 (PKC)

DECLARATION OF MATTHEW A. LEISH

I, Matthew A. Leish, declare under penalty of perjury under the laws of the United States pursuant to 28 U.S.C. §1746 as follows:

1. I am a partner at Miller Korzenik Sommers Rayman, LLP, attorneys for non-party Penguin Random House (“PRH”). I submit this Declaration in support of PRH’s Motion to Seal or Redact certain documents submitted by the parties in connection with their various pending *Daubert* motions. I make this Declaration on personal knowledge except where otherwise indicated.

2. Counsel for plaintiff and defendants have confirmed that they do not oppose this motion.

3. In their prior submissions, both parties have sought permission to file under seal a number of documents and portions of documents containing information designated as confidential by PRH. The documents containing confidential PRH information that are the subject of the parties’ prior sealing requests are annexed to the January 10, 2024 Declaration of

Kara L. Gorycki in Support of Amended Motion to File and Maintain Confidential Information Under Seal (Docket No. 259) (“Gorycki Decl.”); the January 19, 2024 Declaration of Jacqueline A Giannini In Support of Motion to File Confidential Information Under Seal (Docket No. 280) (“Giannini Decl.”); and the February 16, 2024 Declaration of Kara L. Gorycki In Support of Plaintiff’s Opposition to Defendants’ Motion *In Limine* No. 3: Omnibus Motion Regarding Plaintiff’s “Purported Experts” (Docket No. 355) (“Gorycki Opp. Decl.”)

4. As set forth in the Declaration of Allison Dobson (“Dobson Decl.”) submitted herewith, PRH has elected not to seek the continued sealing or redaction of the majority of the materials identified in the Gorycki Declaration, the Giannini Declaration, and the Gorycki Opposition Declaration. Rather, PRH only seeks to seal or redact those documents that reveal confidential, commercially sensitive details regarding PRH’s June 7, 2019 agreement with Plaintiff Linda Fairstein terminating her publishing contracts. The documents as to which PRH seeks sealing or redaction are attached as exhibits to this Declaration.

5. In the attached exhibits, the lines that PRH seeks to redact are highlighted in green. Additional lines highlighted in yellow reflect the parties’ requested redactions in their respective submissions. PRH does not seek the continued sealing or redaction of the yellow highlighted lines; only the green highlighted lines are at issue in this Motion.

6. Annexed hereto as Exhibit A is a June 7, 2019 confidential letter agreement between PRH and Ms. Fairstein setting out the financial terms of the severing of their relationship. This document was originally annexed as Ex. 5 to the Giannini Declaration. PRH seeks the sealing of this document in its entirety.

7. Annexed hereto as Exhibit B is a June 6, 2019 email from PRH to Ms. Fairstein’s agent setting out the proposed financial terms later embodied in the June 7, 2019 letter

agreement. This email was originally annexed as Ex. 8 to the Gorycki Declaration. PRH seeks to redact the green highlighted lines in this document.

8. Annexed hereto as Exhibit C is a page from the expert report of Doug Bania that quotes the above-referenced email to Ms. Fairstein's agent. The Bania Report was originally annexed as Ex. 3 to the Gorycki Declaration; it was also annexed as Ex. 3 to the Giannini Declaration. PRH seeks to redact the green highlighted lines in this document.

9. Annexed hereto as Exhibit D are various pages from the expert report of David Kaplan that discuss the financial terms of the June 7, 2019 letter agreement. The Kaplan Report was originally annexed as Ex. 4 to the Gorycki Declaration; it was also annexed as Ex. 4 to the Giannini Declaration. PRH seeks to redact the green highlighted lines in this document.

10. Annexed hereto as Exhibit E is a June 7, 2019 email from Ms. Fairstein in which she disclosed the financial terms of the June 7, 2019 letter agreement. The email was originally annexed as Ex. 2 to the Gorycki Opposition Declaration. PRH seeks to redact the green highlighted lines in this document.

11. Annexed hereto as Exhibit F is a page from Defendants' Memorandum of Law in Support of Their Omnibus Motion *in Limine* Regarding Plaintiff's Purported Experts that refers to the terms of the June 7, 2019 letter agreement. This Memorandum was originally filed with redactions at Docket No. 291 as noted in Paragraph 15 of the Giannini Declaration. PRH seeks to redact the green highlighted lines in this document.

12. Annexed hereto as Exhibit G is a page from Defendants' Memorandum in Opposition to Plaintiff's Motion *In Limine* to Exclude Certain Testimony of David P. Kaplan that refers to the terms of the June 7, 2019 letter agreement. This Memorandum was originally filed

with redactions at Docket No. 330 as noted in Paragraph 16 of the Giannini Declaration. PRH seeks to redact the green highlighted lines in this document.

Dated: February 23, 2024

A handwritten signature in black ink, appearing to read 'Matthew A. Leish', written over a horizontal line.

Matthew A. Leish